**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

**THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929**

**Crl.MC.No. 5788 of 2001(C)**
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**CC.341/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA**
**.....**

**PETITIONER: ACCUSED**
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**K.R.S. PANICKER,**
**(MANAGING PARTNER),**
**JACOB AGENCIES, XLI/1614, ANPAL**
**BUILDING, BANERJEE ROAD,**
**KACHERIPADY, KOCHI 18.**

**BY ADV. SRI.V.PHILIP MATHEW**

**RESPONDENT/ COMPLAINANT**
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**MAESPHIL, A FRANCHISEE FOR ELGI TYRE**
**AND TREADS LTD., SOUTH KALAMASSERY,**
**KOCHI – 33, REP.BY ITS**
**PROPRIETOR PHILIPOSE JAMES,**
**AGED 54, S/O. PHILIPOSE,**
**RESIDING AT XLIV-1286, ASOKA ROAD,**
**KALOOR, KOCHI 17.**

**BY ADV. SRI.M.N.SANJITH**
**PUBLIC PROSECUTOR SRI.AMJAD ALI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**CRL.MC. NO.5788/2001**

**ORDER ON CMP. NO.4505/2001 IN CRL.MC. NO.5788/2001**

**DISMISSED**

**25.10.2007** **SD/- K.R.UDAYABHANU, JUDGE**

**/TRUE COPY/**

**P.A. TO JUDGE**

**tss**

**K.R. UDAYABHANU, J.**

**CRL.M.C.NO. 5788 OF 2001**

**DATED THIS THE 25TH OCTOBER 2007**

**ORDER**

The petitioner who is the accused in C.C.No.341/2000 in the file of the Judicial First Class Magistrate Court-II, Aluva has sought for setting aside the above proceedings alleging that although the complaint has been filed under Section 138 of the Negotiable Instruments Act, the court below has taken cognizance of the offence under Section 420 I.P.C. despite the fact that there is no allegation in Annexure-I complaint attracting the ingredients of Section 420 I.P.C.

I find that as contended by counsel for the petitioner that there are no allegation in Annexure-I with respect to the ingredients under Section 420 I.P.C. Hence, the order of the court below taking cognizance under Section 420 I.P.C.is set aside. The court below is directed to reconsider the matter and proceed under Section 138 of the Negotiable Instruments Act. The matter will stand posted before the court below on 28-11-2007.

**K.R.UDAYABHANU, JUDGE**

**ks.**

K.R.UDAYABHANU, J

CRL.M.C.NO. 5788 OF 2001

ORDER

25-10-2007